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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,108	01/23/2004	David Namey JR.	99-21 DI	7887

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EXAMINER

BUTLER, PATRICK

ART UNIT PAPER NUMBER

1732

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/764,108	NAMEY, DAVID	
	Examiner	Art Unit	
	Patrick Butler	1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-24 is/are pending in the application.
- 4a) Of the above claim(s) 21-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I, Claims 17-20, in the reply filed on 06 December 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Response to Amendment***

The Applicant's Amendments and Accompanying Remarks, filed 06 December 2005, have been entered and have been carefully considered. No Claims are new, Claim 18 is amended, no Claims are canceled, and Claims 17-24 are pending with Claims 21-24 withdrawn.

In view of Applicant's amendment of specification with respect to priority applications, the Examiner withdraws the previously set forth objection as detailed in the Specification section of the Office Action dated 07 July 2005.

In view of Applicant's amendment of claim 18 to include a step of adding the second flap, the Examiner withdraws the previously set forth 35 U.S.C. 112, second paragraph objection as set forth in the Claim Rejections - 35 USC § 112 section of the Office Action dated 07 July 2005.

In view of Applicant's amendment of claim 12 to include proper dependency to Claim 11, the Examiner withdraws the previously set forth 35 U.S.C. 112, second paragraph objection as set forth in the Claim Rejections - 35 USC § 112 section of the Office Action dated 05 April 2005.

Despite these advances, the invention as currently claimed is not found to be patentable for reasons herein below.

The Text of those sections of Title 35, US Code not included in this action can be found in a prior Office Action.

***Claim Rejections - 35 USC § 103***

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art (Admission, page -1- of Spec.) in view of Namey (US Patent No. 5,902,276).

With respect to claim 17, prior art (Admission) discloses that two part molded masks are available, which have a mask seal and a mask body, and they are bonded together either mechanically or with an adhesive (see Specification, Paragraph 2).

Admission lacks or does not expressly disclose injection molding these components in a manner such that the second material is injected into the masks mold while the mask body is cooling and incompletely cured to define at least a portion of a mask seal member of the mask, wherein the mask seal member is molecularly bonded to the mask body as a consequence of the second material being injected into the mask mold in this manner.

Namey '276 discloses a solution to the problem of the expensive and time-consuming hand assembly of a two-part unit (mask) formed of a hard plastic core (mask body) and a rubber cover (seal) (see col. 1, lines 29-40). Namey '276 teaches that a two-shot mold (mask mold) is used to facilitate manufacture by having a first injection of hard plastic (first material to form mask body) and a subsequent over molding of rubber

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(second material to form seal) tending to form a molecular bond to the underlying plastic (first material) to form a single unit (mask) (see col. 1, lines 56-76).

Namey '276 and Admission are analogous art because they both deal with the technical challenge of attaching a two-part unit of a hard core and rubber cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a two shot mold and two shot process taught by Namey '276 to manufacture the mask body and seal in Admission in order to reduce the expense and time required to make the mask (see Namey '276 col. 1, lines 29-40), which solves the common problem of the expensive and time-consuming hand assembly of a two-part unit (mask) and in order to form a permanent and rugged seal.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art (Admission, page -1- of Spec.) in view of Namey (US Patent No. 5,902,276) as applied to claim 17 above, and further in view of Toffolon (US Patent No. 4,971,051).

With respect to Claim 18, admitted prior art (Admission) and Namey '276 teach injecting a first material, to form a mask body, and a second material, to form a portion of a mask seal member (first flap member), into a mask mold and having the second material injected while the first material is incompletely cured to cause molecular bonding between the two materials as previously described.

Admission and Namey '276 lack or do not expressly disclose a second flap member that generally overlies the first flap member responsive to the mask being in an assembled configuration.

Toffolon does teach a mask (see Ref. 1) adapted to communicate a flow of breathing gas with an airway of a user, wherein the mask seal includes a second flap member (see Ref. 9) that generally overlies the first flap (See Ref. 11) member responsive to the mask being in an assembled configuration.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to attach a second flap member to the mask in the process of making a two part mask taught by Admission and Namey '276 in order to avoid skin irritations and abrasions (see Toffolon col. 1, line 42-45).

With respect to Claim 19, the above combination teaches that the flap ring (See Toffolon Ref. 9) (second flap member) is attached mechanically with the option of having two or one seal (interpreted to mean removable/detachable) (see col. 2, lines 16-21).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art (Admission, page -1- of Spec.) in view of Namey (US Patent No. 5,902,276) as applied to claim 17 above, and further in view of Green (US Patent No. 2,664,887).

With respect to Claim 20, Admitted prior art and Namey '276 teach injecting a first material, to form a mask body, and a second material, to form a portion of a mask seal member (first flap member), into a mask mold and having the second material injected while the first material is incompletely cured to cause molecular bonding between the two materials as previously described.

Additionally, Namey '276's method of attaching two objects is to sequentially injection mold parts together. The first material is a hard plastic core (mask body), and the second material is rubber (coupling member)(see col. 1, lines 56-76).

Admission and Namey '276 lack or do not expressly disclose that the piece made by injecting the second material into the mask mold is a coupling member, which is molded to the mask body.

Green teaches a gas mask that uses a rubber (second material) coupling member (See Ref. 9) attached to the mask body (See Ref. 1)(See Col. 2, lines 12-20).

Namey '276 and Green are analogous art because they both deal with the technical challenge of attaching a two-part unit of a hard core and rubber cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the rubber coupling member as taught by Green to be injection molded with the mask body using the second material as taught by Namey '276 in the two shot mold and two shot mask molding process taught by Namey '276 and Admission in order to have an air tight coupling (see Green col. 2, lines 27-29) and in order to reduce the expense and time required to join the mask and coupling (see Namey '276 col. 1, lines 29-40).

### ***Response to Arguments***

Applicant's arguments filed [filing date] have been fully considered but they are not persuasive.

Applicant argues with respect to the 35 USC 103 rejections. Applicant's arguments appear to be on the grounds that:

1) The sealing area is too small on in Namey to use to bond two materials together.

2) The bond between the seal and mask would not be air tight if bonded via Namey's bond.

The Applicant's arguments are addressed as follows:

1) The sealing area of the instant invention is not claimed to be of small size. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., small sized seals) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

2) The seals of the instant invention are not claimed to be air tight. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., air tight seals) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Moreover, the seals are only to "communicate flow of ... gas."

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is 571-272-8517. The examiner can normally be reached on Monday through Friday 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianne can be reached on 571-272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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